

Exhibit D

CAUSE NO. 2005-38821

ALEJANDRO BENAVIDEZ

VS.

RAILSERVE, INC.

DEER PARK TERMINAL, INC.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

234th JUDICIAL DISTRICT

AFFIDAVIT OF JOHN BOZANT

STATE OF TEXAS)
)
COUNTY OF HARRIS)

"My name is John Bozant, I am over eighteen (18) years of age, have not been convicted of a crime of moral turpitude and am fully competent to testify truthfully to matters below based on my own personal knowledge and can accurately perceive, recall and recount the information testified to below. I swear that the matters testified to below are true and correct based on my own personal knowledge.

I have this personal knowledge because I was employed by Railserve, Inc., at the Deer Park Rail Terminal ("DPRT") as the Yard Master (2004-2005) and Switching Foreman (2003-2004, 2005).. As part of my job duties I routinely reviewed the safety policy and procedures, paper work and received instruction regarding rail cars, the rail car movements, operating policies and procedures, the customers who owned or controlled the rail cars, what the customers directed to be done with the rail cars and the treatment of the rail cars. Also during my employment with Railserve, Inc., I personally worked on the crews whose job it was to conduct the rail movement operations. I have personal knowledge of the rail cars, management and rail operations at the DPRT.

Railservice, Inc. provided rail operations for U.S. Development, who I understood to be the owners of the Deer Park Rail Terminal ("DPRT") and related entities, at the DPRT. I worked closely with "Rick" Orms (employed by Railservice, Inc.) and Brent Tucker (who I understood to be employed by U. S. Development). Brent Tucker would receive written and oral direction from the U. S. Development marketing branch as to the arrival, departure and treatment of each rail car inside the DPRT.

I personally witnessed, on numerous occasions, Brent Tucker orally direct Rick Orms and me as to the details of the rail operations that occurred at the DPRT. Brent Tucker also orally directed me as to the rail car operations I performed and I told my crews to perform, while I was working at the DPRT. When I first started working at the DPRT, it was the standard policy and procedure to connect the air brakes on every rail car prior to all rail car movements.

I personally heard, with my own ears, Brent Tucker state that the rail operations were falling behind schedule and that he had this conversation with Paul Tucker (who I understood to be the head boss for U. S. Development and related entities) as well. I also personally heard, with my own ears, Brent Tucker order me and Mr. Orms that to speed up the rail car operations by "kicking" ^{34b} cars in our rail movements. The term "kicking" means to jerk the rail cars off of the coupling and let the cars roll to a stop without first stopping the train and then decoupling the cars. I also personally witnessed, with my own ears, Brent Tucker order us to stop hooking up the air brakes so that the cars could be kicked. Over time and by the time Alex Benavidez started working for Railservice, I heard, with my own ears, Brent Tucker order us to starting kicking more than ^{34b} rail cars, ~~and up~~ ⁴⁸ ~~the rail cars~~. By the time Alex Benavidez started working at Railservice and per the instructions given to me and other Railservice, Inc.

personnel at the DPRT by Brent Tucker, the Railserve switching crews were instructed not to engage the air brakes while doing rail operations. This practice continued to the day of and after Alex Benavidez was injured at the DPRT. Brent Tucker told me and other Railserve personnel that he had discussed not hooking up the air brakes and "kicking" of rail cars with Paul Tucker.

In 2004 and 2005, Burlington Northern Santa Fe ("BNSF") was one of the largest customers of the DPRT. In fact, if there were not at least 400 BNSF cars at the DPRT at any one time, BNSF would immediately send more of its customers rail cars to the DPRT. Based on my day to day experience, oral and written instructions and review of the paper work in the course of my employment at the DPRT, the rail cars coming from BNSF were inbound from locations all over the United States and primarily for BNSF's customers Solvay, OXY, Atofina, Chevron-Phillips and Sunoco. The cars would come through the PTRR to DPRT. Railserve would switch, block and stage the BNSF customer cars for plant destinations near the DPRT or to outbound locations throughout the United States.

In 2004 and 2005, fuel tank rail cars were loaded at the DPRT by Shell Oil, who had a pipeline into the DPRT. These cars were often referred to the "Milk Train." The Milk Train cars were loaded with fuel by Shell Oil at the DPRT. The rail cars were cars controlled by BNSF for the benefit of BNSF customers. Railserve would block, stage and switch the fuel tank rail cars for destinations throughout the United States, including Albuquerque, New Mexico. Most of the cars would be loaded with diesel fuel bound for "Love" gas stations throughout the United States. During the time period Alex Benavidez worked for Railserve, the Milk Train was blocked for "Unitrain" movement. The term "Unitrain" meant the cars were placed in long lines of rail cars that remained intact until these rail cars reached their ultimate destination throughout the United States.

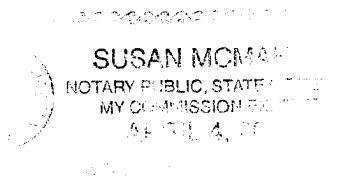
I obtained my knowledge of all of the above during the course of my day-to-day job duties while employed by Railserve at the DPRT, the oral and written directions given to me and the paperwork, safety policies and procedures and operating policy and procedures, I read while employed by Railserve, Inc. at the DPRT.

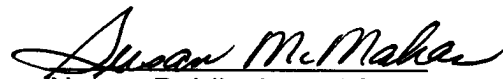
I swear that the above statements are true and based on my personal knowledge and events I witnessed with my own eyes and ears and during the course of my employment. I attest to the matters above under the pains and penalties of perjury.

Further, affiant sayeth not."


John Bozant

SWORN TO AND SUBSCRIBED BEFORE ME this 6th day of December, 2006, to certify which witness my hand and seal of office.




Notary Public, in and for
the State of Texas

(Seal)